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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 UNITED STATES OF AMERICA,  
8 Plaintiff,  
9 v.  
10 WILLIAM DANIEL GEE,  
11 Defendant.

Case No. 2:19-cr-0200-RFB-VCF

**ORDER**

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13 **I. INTRODUCTION**

14 Before the Court is Mr. Gee's Motion to Suppress [ECF No. 24]. The Court held an  
15 evidentiary hearing on this Motion. For the reasons stated below, the Court grants the Motion to  
16 Suppress.

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18 **II. FACTUAL FINDINGS**

19 The Court makes the following factual findings based upon consideration of all of the  
20 evidence submitted at the evidentiary hearing in this case.

21 On June 27, 2019, Officer Jenkins and Officer Nededog of the Las Vegas Metropolitan  
22 Police Department were conducting a "spot check" on a residence located at 2509 Conestoga Trail  
23 in Las Vegas. They were driving an unmarked police car. They were following up on a possible  
24 lead regarding a stolen vehicle being associated with this address. This was not a high crime area  
25 known for drug sales or gang-related criminal activity.

26 When Jenkins and Nededog drove past an intersection near the house, they saw four men  
27 leave the residence and start walking toward San Fernando Drive which is the nearest street south  
28 of the house. The officers could not see where the men were walking as they were walking toward

1 San Fernando Drive. The officers did not have a clear view of the men as they walked from the  
2 residence to San Fernando Drive. The men then walked from San Fernando Drive toward Jones  
3 Boulevard where they turned and headed south. The officers did not have a clear view of the men  
4 as they walked towards Jones and then turned southward. After these men had been walking on  
5 Jones for a few minutes, the officers activated the police lights on their vehicle to initiate a  
6 purported traffic stop of the men. Upon the activation of the lights and the approach of the vehicle,  
7 Gee fled from the police car as Jenkins exited the vehicle. After a brief chase, Gee fell down, rolled  
8 on the ground several feet and was then restrained by Jenkins. Gee dropped a weapon during his  
9 fall. Jenkins placed Gee in handcuffs and stood him up with Nededog watching. Jenkins then  
10 conducted a pat down of the outside of Gee's clothing but did not find a weapon. Jenkins then  
11 lifted up the front of Gee's clothing and felt inside of the waistband of Gee's pants. Jenkins then  
12 felt and pulled out a holster that had been clipped to Gee's belt. The holster was empty. Based  
13 upon the empty holster, Jenkins began to search the area where Gee had fallen and then been  
14 restrained. Jenkins then found the handgun which is the basis for the charges in this case. Jenkins  
15 would not have found the weapon had he not seen the empty holster and swept the area. He  
16 conducted a wide search of the area beyond the detention area to find the weapon.

### 17 18 **III. LEGAL STANDARD**

19 A police officer "may, consistent with the Fourth Amendment, conduct a brief,  
20 investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is  
21 afoot." Illinois v. Wardlow, 528 U.S. 119, 123 (2000)(internal citations omitted). "While  
22 reasonable suspicion is a less demanding standard than probable cause and requires a showing  
23 considerably less than preponderance of the evidence, the Fourth Amendment requires at least a  
24 minimal level of objective justification for making the stop." Id. (internal citations omitted).  
25 Whether reasonable suspicion exists depends upon the "totality of the circumstances" surrounding  
26 the stop, including "both the content of information possessed by police and its degree of  
27 reliability." Alabama v. White, 496 U.S. 325, 330 (1990).

1 “Headlong flight—wherever it occurs—is the consummate act of evasion: It is not  
2 necessarily indicative of wrongdoing, but it is certainly suggestive of such.” Illinois v. Wardlow,  
3 528 U.S. 119, 124 (2000). However, the Ninth Circuit has explained that “the Supreme Court has  
4 never endorsed a *per se* rule that flight establishes reasonable suspicion. Instead, the Court has  
5 treated flight as just one factor in the reasonable suspicion analysis, if an admittedly significant  
6 one.” United States v. Brown, 925 F.3d 1150, 1155 (9th Cir. 2019). The Ninth Circuit further  
7 recognized in Brown that the Supreme Court “has a long history of recognizing that innocent  
8 people may reasonably flee from the police.” Id.

9 Where an officer reasonably believes that “the persons with whom he is dealing may be  
10 armed and presently dangerous,” the officer may conduct a frisk or “pat-down” search of that  
11 person. Terry v. Ohio, 392 U.S. 1, 30 (1968). “For a frisk to be valid, under this exception to the  
12 general rule requiring probable cause, the frisk must be both (1) *justified at its inception*, and (2)  
13 confined in scope to a *carefully limited search of the outer clothing* in an attempt to discover  
14 weapons which might be used to assault an officer.” United States v. I.E.V., 705 F.3d 430, 433  
15 (9th Cir. 2012)(internal quotations omitted)(emphasis added).

16 A person is not “seized” within the meaning of the Fourth Amendment until his “freedom  
17 of movement is restrained” by means of “physical force or show of authority.” United States v.  
18 Smith, 633 F.3d 889, 892 (9th Cir. 2011).

#### 19 20 **IV. DISCUSSION**

21 The Court finds based upon the totality of circumstances that the officers lacked reasonable  
22 suspicion to detain Gee when they first sought to detain him, and they continued to lack reasonable  
23 suspicion after he was seized and searched. The government offers three bases for reasonable  
24 suspicion of Gee by the officers at the time that he was seized. The Court considers and rejects  
25 each in turn.

26 The Court first finds that Gee was not seized until he was restrained by Jenkins after  
27 initially fleeing from officers when they pulled their car up to the walking men and activated the  
28 flashing lights on their unmarked police car. Smith, 633 F.3d at 892.

1           The government first argues that the officers had reasonable suspicion to detain Gee  
2 because they observed him commit a traffic violation, i.e. walking in the street in violation of  
3 Nevada Revised Statute (“NRS”) § 484B.297. However, the Court finds that the government has  
4 not presented credible evidence that in fact the officers did observe Gee commit a traffic violation.  
5 The Court does not find the evidence including the testimony in this case credibly establishes that  
6 the officers actually observed Gee, or his companions commit a traffic violation.

7           Second, the government argues that officers observed Gee commit a hand-to-hand drug  
8 transaction with another one of his companions. The Court finds that the officers did not in fact  
9 see Gee or his companions engage in hand movements or any conduct which indicates that a hand-  
10 to-hand drug transaction occurred. The Court finds that the government has not credibly  
11 established that the officers observed any unusual hand gestures that would be indicative of or  
12 suggestive of a hand-to-hand drug transaction or any other illegal activity. This alleged conduct  
13 can therefore not serve as a basis for reasonable suspicion.

14           Third, the government argues that Gee’s flight from officers in conjunction with other  
15 factors establishes reasonable suspicion. However, Gee’s flight alone may not establish reasonable  
16 suspicion. Brown, 925 F.3d at 1155. In this case, the Court finds that the government has not  
17 established that the officers possessed any facts or observed any conduct that would create  
18 reasonable suspicion of criminal activity. The officers did not observe any traffic violations and  
19 did not observe any hand movements that would be indicative of criminal activity. The government  
20 did not establish through credible evidence that the interaction between Gee and the officers  
21 occurred in a high crime area or occurred in conjunction with any suspicious criminal activity.  
22 This flight therefore cannot establish reasonable suspicion to detain and search Gee.

23           Finally, the Court further finds that the weapon in this case must also be suppressed because  
24 the officers did not have reasonable suspicion to conduct a pat down of Gee’s outer clothing and  
25 certainly did not have probable cause to search underneath Gee’s clothing and inside of his pants.  
26 Upon finally seizing Gee, the officers conducted a pat down search of the outside of his clothing  
27 and noticed nothing. Jenkins then lifted up Gee’s clothing to search the inside of Gee’s waistband  
28 where Jenkins discovered an empty gun holster. This holster prompted Jenkins and his partner to

1 search for a weapon which they found near the area of the seizure. Without this search of the inside  
2 of Gee's pants, the officers would not have conducted a search of the surrounding area and would  
3 not have discovered the weapon in this case. The officers did not have reasonable suspicion to  
4 even conduct a pat down search of Gee. Upon discovering nothing from the pat down, the officers  
5 did not have based upon the totality of circumstances a legal basis to search inside of Gee's  
6 clothing.

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8 **V. CONCLUSION**

9 For the reasons stated,

10 **IT IS HEREBY ORDERED** that the Motion to Suppress [ECF No. 24] is GRANTED.  
11 The weapon found as a result of the detention of Defendant Gee is suppressed.

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13 **DATED:** February 17, 2020.

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15 **RICHARD F. BOULWARE, II**  
16 **UNITED STATES DISTRICT JUDGE**  
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